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IN THE

# Supreme Court of the United States

**OCTOBER TERM, 1972**

No. 72-200

LIDA MOJAR, Natural Mother,

*Petitioner,*

*against*

PETER A. SIGNORELLI, et ux,

*Respondents.*

**PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPERIOR COURT OF THE STATE OF NEW JERSEY**

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner, Lida Mojar, prays that a Writ of Certiorari issue to review a judgment of the Appellate Division of the Superior Court of the State of New Jersey filed and entered April 11, 1972 (unreported), affirming a judgment of the New Jersey Middlesex County Court, Probate Division, dated April 5, 1971 (unreported), which denied the petitioner's application seeking custody of her son and awarded custody to the respondents for the purpose of their adoption of said petitioner's child. A petition to the New Jersey Supreme Court for certification was denied on June 8, 1972, 60 N. J. 514.

## Opinions Below

The decisions and opinions of the various Courts involved, culminating in this Petition, are as follows:

March 16, 1971 Decision of Middlesex County Court, Probate Division, following preliminary adoption hearing on the custody and adoption of the subject infant. (unreported; full text in Appendix, P. 3a to 11a)

April 5, 1971 Order of the Middlesex County Court, Probated Division, severing the parent-child relationship between the petitioner and her son.

April 23, 1971 Notice of Appeal to the Appellate Division of the Superior Court of New Jersey, appealing from the final order of the Middlesex County Court, Probate Division, dated April 5, 1971.

April 11, 1972 Opinion and Judgment of the Appellate Division of the Superior Court of New Jersey affirming the Final Judgment of the Middlesex County Court, Probate Division dated April 5, 1971. (unreported; full text in Appendix, P. 13a to 14a)

June 8, 1972 Order of the Supreme Court of New Jersey denying natural mother's (petitioner herein) petition for Certification to the Appellate Division of the Superior Court of New Jersey, 60 N.J. 514.

## Jurisdiction

The Supreme Court of New Jersey denied on June 8, 1972, a petition for Certification to the Appellate Division of the Superior Court of New Jersey for the purpose of reviewing the judgment of the Appellate Division. Ac-

cordingly, it is respectfully requested that the jurisdiction of this Court be invoked to review the judgment of the Appellate Division of the Superior Court of New Jersey dated April 11, 1972. This judgment affirmed a final judgment of the Middlesex County Court of New Jersey, Probate Division, dated April 5, 1971, which, following a contested preliminary adoption hearing to determine custody, permanently denied any custodial rights of the natural parent to her son and permanently awarded custody to the respondents herein pending a final order of adoption. (This final order of adoption was entered by the Probate Division on July 28, 1972 granting the application of the respondents herein to adopt the son of the petitioner.) The decisions of the Probate Division and the Appellate Division are not reported. The decision of the Supreme Court of New Jersey, denying certification, is reported in 60 New Jersey 514.

The jurisdiction of this Court is sought to be invoked under Title 28 United States Code, Section 1257(3) since a right is claimed by both the petitioner on her own behalf and by the petitioner on behalf of her son under the Ninth Amendment, which right the petitioner respectfully contends has been unconstitutionally abridged by the State of New Jersey with respect to both her and her son.

## Questions Presented

1. Whether the State of New Jersey may permanently deprive a natural parent of the custody of his child as a result of a hearing wherein the State fails to recognize a presumption of a right of custody residing primarily in the natural parent as required by the Ninth Amendment.

2. Whether the State of New Jersey, in derogation of a natural parent's and his child's fundamental rights under the Ninth Amendment, may effect a permanent sev-

erance of the natural parent-child relationship where the adverse custodial claimants are unrelated third parties and where there has been no finding of unfitness or abandonment on the part of the natural parent.

3. Whether it is a violation of the Ninth Amendment rights of the petitioner and her son for the State of New Jersey to permanently sever their natural parent-child relationship for the reason that the welfare of the child requires such action, when such welfare is measured in terms of comparative economic and material advantage and psychological speculation.

### Constitutional Provisions Involved

The Ninth Amendment to the United States Constitution:

> "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

## Statement

The petitioner herein, a New York resident, is the natural mother of a now four year old son, Stephen, who was born on June 22, 1968 and whom she, on February 18, 1969, consented to be adopted by the respondents, residents of New Jersey. The transcript of the hearing below is replete with reference to the pressures which were brought to bear on the petitioner to give her son up for adoption, and the repeated efforts on her part to retain his custody. In this regard this Court's attention is respectfully directed to the extensive statement of facts contained in the natural mother's brief filed in the Appellate Division.

Prior to a preliminary adoption proceeding in the Probate Division of the Middlesex County Court of New Jersey, conducted on November 23, 1970 and continued on Febru-

ary 26, 1971, the natural mother, by formal application to the Court, entered her withdrawal of consent to the pending adoption and interposed her objection to the respondents' complaint seeking the adoption of her son.

Following the hearing on the respondents' complaint and the petitioner's application, the Court rendered a decision on March 16, 1971 upon which a final order was entered on April 5, 1971 permanently severing the parent-child relationship between the natural mother and her son, and awarding custody to the respondents for the purpose of their adoption of the petitioner's son (P. 12a).* The reasons for the Trial Court's decision were basically fourfold as delineated in its opinion.

a) The respondents are fit (P. 4a);

b) The child should remain with respondents because this would "completely shield . . . (him) from *any and all* ill-effects which such a move might engender" (italicizing added) (P. 10a);

c) "On balance the plaintiffs (respondents) have a slight edge . . . a future life with the plaintiffs (respondents) holds out greater assurance for the boy's future welfare" (P. 10a);

d) "An additional factor is one about which little has been said but involves a fact of life. I am concerned that were I to return Stephen to his mother's old neighborhood, so to speak, what the gossip would and could do" (P. 11a).

The Federal Constitutional questions herein sought to be reviewed were raised in the Trial Court by argument in the form of memorandum of law submitted by the petitioner and in the Appellate Division by argument in written briefs and orally, and in the Supreme Court of New Jersey by argument in a petition seeking Certification.

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* Parenthetical references are to pages of the appendix herein.

Prior to the decision in the Probate Division, memoranda of law were submitted to the Trial Court by both parties. In the brief filed on behalf of the natural mother, Counsel stated in Point I of his argument, that as a matter of law, the natural mother was entitled to regain custody of her son because she had withdrawn her consent to the adoption and that there was no finding of abandonment or unfitness on the part of the natural mother. However, the Trial Court in its decision stated in reference to this point as follows (P. 5a).

> "There appears to be no precise standard or formula in the law for resolving a dispute of this kind. Generally speaking, a determination requires the Court to evaluate all aspects of this situation and to decide what disposition is in the best interest of the child. The competing interests of a natural parent and adoptive parents are always quite evident, as is the heart break on both sides, but such considerations are secondary. The welfare of the child is paramount and must be controlling. It is probably fair to say that over the years the natural mother has enjoyed something of an edge, all other things being fairly equal. However each case must be decided on its own facts and necessitates the exercise of careful judicial discretion."

An appeal was taken from the final order of the Trial Court to the Superior Court of New Jersey, Appellate Division. In the memorandum of law submitted to the Appellate Division by the petitioner herein and at oral argument of the case in the Appellate Division, it was urged on behalf of the petitioner herein, that the Trial Court in its consideration of the testimony adduced at the hearing of this matter, failed to afford to the petitioner herein, any presumption in her favor as the natural mother, which presumption, it was contended, encompassed

a primary right to the care and custody of her son. It was emphasized in the submitted brief and at oral argument that the Ninth Amendment supports the presumption of a primary right of a natural parent to the care and custody of his child over any claims by third parties, in the absence of *a finding of abandonment of unfitness on the part of the natural parent.* It was argued that the State has no authority on the basis of a substantial State interest, to interfere with, or, in any manner, effect a severance of the parent-child relationship except where the natural parent by his own action or conduct causes or requires this drastic and irrevocable step.

This argument was stated in Point I on Page 9 of the petitioner's Appellate Division brief as follows:

> "In child custody proceedings involving Natural Parent and unrelated Third Parties, the best interests of the child must be examined in the context of the primary right of the Natural Parent to the custody of his child."

On page 16 of the same brief, it was stated that:

> ". . . . the Ninth Amendment of the United States Constitution supports the presumptive right of a natural parent over any claims of unrelated third parties to the custody of his child absent a finding of abandonment or unfitness. This Amendment speaks in terms of fundamental rights, *Griswold* v. *State of Conn.*, 381 U.S. 479, 492-496, which necessarily includes the right of a parent to the care and custody of his child. *Meyer* v. *Nebraska*, 262 U.S. 390; *In re Adoption of Anderson*, 235 Minn 192, 50 N.W. 2d 278; *People ex rel. Portnoy* v. *Strasser*, 303 N.Y. 539, 542 citing *Meyer*, supra). Accordingly, any disparagement or modification of the presumption in favor of the natural parent to his child over claims of third parties would entail an abridgment of this Ninth

Amendment right of a natural parent and his child to have the opportunity to develop and nurture a normal parent-child relationship. The state through its Courts should be permitted to sever the parent-child relationship only in the most extreme situations because of both the nature of the relationship, the security of which is guaranteed by the Ninth Amendment, and the lasting effects of such a severance. In summary, it is contended that the state has no authority to interfere with the parent-child relationship except where the parent by his own action or conduct causes or requires this drastic and irrevocable step. There is no proof in the record of this case indicating any basis, in the conduct or actions of the natural mother, requiring the state through the Courts of New Jersey to effect a severance of the mother-child relationship between Mrs. Mojar and her son, Stephen. The record is clear that Mrs. Mojar is not unfit and she has not abandoned her son (See Point IV). Also, the reasons that the Court did state for its determination declining to order the child returned to Mrs. Mojar were not sufficient to warrant denial of the natural mother's request for the return of her son (See Point II).

Therefore, the trial court by its obvious failure to consider the best interests of the child in the context of the rights of the child's natural parent has ignored the constitutional mandate of the Ninth Amendment, as expressed in the decisions of the Courts of this and other jurisdictions. On this basis, the lower Court's ruling should be reversed."

The Appellate Division failed to consider this Constitutional Argument in the opinion it rendered but choose to affirm the decision of the lower court "for substantially the same reasons expressed in the letter opinion of Judge Morris" (the trial judge below). In this affirming opinion,

the Appellate Division did take exception to Judge Morris' reference to the effects of neighborhood gossip (P. 14a).

This determination of the Appellate Division was unanimous and consequently a petition to the Supreme Court of New Jersey was filed requesting certification to the Appellate Division. This petition was denied (P. 15a). In the petition to the Supreme Court of New Jersey, it was urged upon the Supreme Court of New Jersey that the appeal presented a substantial and unresolved constitutional question under the Ninth Amendment: when may the State abridge the fundamental rights of both the natural parent and his child involving the preservation of the natural parent-child relationship? In this regard, the petitioner argued on Pages 6 to 8 of her petition to the Supreme Court of New Jersey that the right of the natural parent to the security of the custody of his child is a fundamental right, *Meyer* v. *State of Nebraska*, 262 U.S. 390, 399 and that this natural fundamental right should not be subject to any interference or review by the State except as occasioned by the most compelling circumstances. It was further argued in the petition to the New Jersey Supreme Court that both the Trial Court and the Appellate Division erred in failing to examine the testimony elicited below in the context of the application of the constitutional rights of the natural parent and that this error was clearly manifest in the fact both lower courts decided against the natural mother and for unrelated third parties for insignificant and inadequate reasons based on economic and material comparisons between the parties and on speculative psychological factors.

After the New Jersey Supreme Court's denial of the petition for certification, the Probate Division of the Middlesex County Court entered, on June 28, 1972, a judgment of adoption on behalf of the respondents.

## REASONS FOR GRANTING THE WRIT

**The refusal by the State of New Jersey to restore to the petitioner the care and custody of her son was a denial of the petitioner's and her son's fundamental rights under the Ninth Amendment.**

Significant Federal Constitutional questions of presently wide application pertaining to the rights of natural parents with respect to the care and custody of their children, free from unwarranted state intervention on behalf of third parties, are herein involved. The granting of the writ will enable this Honorable Court to elaborate and further define the nature of those fundamental rights regarding parental custody of children, about which very rights this Court has previously spoken as recently as last term in *Stanley* v. *Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 1212. The basic contention of the petitioner is that the State of New Jersey deprived the petitioner and concomitantly her son of their constitutional rights when it failed to afford to her, as the natural mother in a contested adoption proceeding, the presumption of a primary right to the care and custody of her son, and when it decided in favor of the respondents only on the basis of comparative economic and material factors and psychological speculation.

**A. The Ninth Amendment requires that, in judicial proceedings involving custody of a child where the parties involved are a natural parent and unrelated third parties the natural parent must be accorded the presumption of a primary and fundamental right to custody, and the child must be accorded the presumption of a primary and fundamental right to remain with or be returned to his natural parent.**

In the case at bar, the ultimate question is when may the State through its Courts effect a permanent curtailment of the fundamental rights of both the natural parent and his

child involving the preservation of the natural parent-child relationship. It is respectfully contended, as a matter of law under the mandate of the Ninth Amendment, that in the absence of a finding of abandonment, neglect, or unfitness, or some such action or conduct on the part of the natural parent himself which would cause or require State intervention on the basis of a substantial State interest, a Court may not effect a permanent severance of the natural parent-child relationship.

This Constitutional thesis is enunciated on the basis that the right of a child to be with his natural parent and the right of the natural parent to the security of the custody of his child is a fundamental right inherent in the relationship between a child and his parents, that is guaranteed by the Ninth Amendment which speaks in terms of fundamental rights, *Griswold* v. *State of Connecticut*, 381 U.S. 479, 492-496, and that is readily recognizable as such a fundamental right and "essential" by law and society, *Meyer* v. *State of Nebraska*, 262 U.S. 390, 399; *Spence-Chapin Adoption Service* v. *Polk*, 29 N.Y. 2d 196, 203, citing *Portnoy* v. *Strasser*, 303 N.Y. 539, 542; *Stanley* v. *Illinois*, 405 U.S. 645; *Prince* v. *Massachusetts*, 321 U.S. 158, 166; *People ex rel. Scarpetta* v. *Spence Chapin A.S.*, 28 NY 2d 185, cert. denied 404 U.S. 805.

This natural and fundamental relationship between a natural parent and his child should not be subject to any interference or curtailment by the State except as occasioned by the most compelling circumstances, such as any action or omission *on the part of the natural parent* which would gravely jeopardize the welfare of his child.

To view this relationship between a natural parent and his child, and the role of State with respect thereto, in any other manner would both impugn the nature of this relationship, and distort the role of society whose *only* interest in such a relationship should be to restore, promote, or preserve it.

A child is not personalty that anyone may claim. A child is a person whose education, development, affection and custody are parental treasures. The parental treasures involve rights more precious than property rights, *May* v. *Anderson*, 345 U.S. 525, 533. Simply stated, a child may never be deemed to be "up for grabs" but belongs first and foremost to his natural parents.

In the present case, it is evident that the lower Courts erred in failing to examine the testimony elicited below in the context of the fundamental rights of both the natural parent and her son. This error is clearly manifested by the fact the lower Courts decided against the natural mother and for unrelated third parties on a strictly *comparative basis* and even then only on the basis of insignificant and inadequate reasons. As such, it is apparent the Courts below failed to appreciate the primary nature of the right of the natural parent in this custody matter involving unrelated third parties, and consequently committed grave constitutional error when they in effect equated the within contest for child custody to a contest between natural parents wherein both parties would have equal standing on the question of custody.

**B. The record does not support any finding warranting a determination in derogation of the natural mother's and her son's rights under the Ninth Amendment.**

The State through its Courts may not lightly interpose itself into such a relationship or sever it on insubstantial or trivial grounds. In the case at bar, there was no finding by the lower Courts that the natural parent abandoned her child or that she is an unfit person and a review of the testimony elicited below would not support such a finding.

Firstly, the question of unfitness was never raised. Secondly, under the definitional limitations of abandonment as found in the leading case of *Matter of Bistany*, 239 N.Y. 19, 24, J. Cardozo, it is not possible to find that the peti-

tioner, in the case at bar, by *unequivocal* and *absolute* acts manifested an intention to abandon her son. The most that was said on this point in the lower Courts was in a statement in the Trial Judge's opinion that "there was a lessening of determination on the part of the natural mother to keep the baby" (P. 7a). This finding, even if it is substantiated by the record, does not coincide with the rigid definition of abandonment found in *Bistany,* or in *N.J.S.A.* 9:6-1 (P. 2a) which specifically states that the abandonment of a child is a *wilful* forsaking of a child, or in *Ex Parte Malley,* 132 N.J. Eq. 434, 28 A2d 518 which indicates that the abandonment of a child imports any conduct on the part of a parent which evidences a *settled* purpose to forgo *all* parental duties, and relinquish *all* parental claims to the child.

The recitation in the per curiam decision of the Appellate Division that "the record amply supports his (the Trial Judge's) conclusion that it is in the best interest of this child that it be permitted to remain with its adopting family" is not founded on any clear or decisive testimony in the record. The Appellate Division in support of this aspect of its decision cites the case of *In Re P. and Wife,* 114 N.J. Super 584. However, the facts in *In Re P. and Wife* are totally different from the facts in the case at bar. In the case of *In Re P. and Wife,* the Court had a valid basis for concern for the welfare of the child because of the unwholesome environment of the family life of the natural parents clearly demonstrating their unfitness. There is no cause for a similar concern in the present case. However, as a matter of importance, it would appear that the Appellate Division in citing *In Re P. and Wife,* relied upon one section of the New Jersey Adoption Act, *N.J.S.A.* 9:3-17 *et seq.,* on which to base its decision in the case at bar. Since there is no abandonment or unfitness involved in this case, it is logical to conclude that the Court based its determination on *N.J.S.A.* 9:3-17(a) which states that it is the

policy of New Jersey to protect children placed for adoption ". . . from interference by his natural parents after he has been established in an adoptive home" (P.1a). This declared policy and apparent reliance thereon by the Appellate Division in this case raises serious constitutional questions since it clearly indicates a deliberate refusal by the State of New Jersey in the case at bar to recognize a natural parent's fundamental rights inherent in his relationship with his children.

An examination of the Trial Court's decision which was affirmed by the Appellate Division "substantially for the reasons expressed in the letter opinion of Judge Morris", reveals that both lower Courts committed grave constitutional error in deciding against the natural mother for the reasons expressed by Judge Morris. The reasons delineated in the opinion of Judge Morris are insignificant and, both individually and in toto, do not, as a matter of law, constitute a substantial basis for denying the natural mother-petitioner and her child their fundamental rights to a restoration and preservation of their parent-child relationship. The Trial Court based its decision in large measure upon a finding that "*on balance* the plaintiffs have a *slight* edge" (P. 10a) (emphasis added) and because the child "should be shielded from *any* and *all* ill effects such a move might engender" (P. 10a) (emphasis added). To judge that the Ninth Amendment rights of the natural mother and her son should be curtailed because as a result of a comparison between adoptive parents and the natural mother there appeared to be a *"slight edge"* in the adoptive parents, is a judicial view which is *grossly unjust and is lacking in fundamental fairness.* A further analysis of the Trial Court's decision adopted by the Appellate Division, indicates that the "slight edge" is founded upon similarly insignificant details and pure surmise: the longer marriage of the adoptive parents; the superior economic situation of the adoptive parents (this is totally unsubstantiated by the record and by the fact that presently the

natural parent's husband had a total net income last year of $10,000.00); the additional aunts and uncles on the adoptive parents' side; the possible neighborhood gossip that might cause the child emotional trauma were he returned to his mother. These reasons for the lower Court's determination ought, as a matter of law, be deemed insufficient to balance the scales in favor of leaving the subject child with the adoptive parents at the expense of denying the child and his natural mother their Ninth Amendment rights. It is clear that as a result of the lower Court's reliance on these insignificant and inadequate reasons, both lower Courts committed grave constitutional error.

Another reason for the Trial Court's decision is that the child *might* suffer *some* ill effects were he to be transferred back to his natural mother. Apparently, the Appellate Division also adopted this aspect of the Trial Court's decision. The crux of the problem presented by this aspect of the opinions of the lower Courts is whether the mere transfer of the child back to his natural mother and her hsuband would be in the child's best interest. Since an examination of the record does not disclose unfitness of any of the parties, the only question presented is whether there is sufficient evidence in the record to allow the lower Courts and now this Court to conclude as a matter of law that the subject child would be so harmed by the fact of a transfer of custody that the child and his natural parent's Ninth Amendment rights must be curtailed. (This is not to ask whether the child would be harmed by restoring custody to his natural mother since such inquiry would not be pertinent in the absence of any indication of unfitness on her or her husband's part.)

There is no clear evidence in the record to support a determination that in this case, this child being returned to his natural mother—transferred from one good home to another good home—would suffer any lasting or signifi-

cant damage, or any damage at all. To conclude otherwise is purely speculative and amounts to nothing more than subjective opinion. *The Trial Judge's view adopted by the Appellate Division, is itself couched in speculative and subjective terms* (P. 10a).

In this regard, it is respectfully urged that this honorable Court in the case at bar, should decide the limits to which a Court should be permitted to go in interpreting what is in a child's best interests based on the fundamental rights doctrine encompassed within the scope of the Ninth Amendment. It is the natural mother-petitioner's contention that her child's welfare and best interests will be served by returning him to the natural parent's care and custody, where, as in the present case, there is no finding of abandonment or unfitness and that in the absence of such findings, a child's best interest is in fact consonant with his being in his natural parent's care and custody. (See Report of American Academy of Pediatrics, Committee on Adoptions: "Identity Development in Adopted Children", *Pediatrics,* Vol. 47, No. 5, May, 1971, Appendix C). Furthermore, it is respectfully urged that because of the fundamental nature of the rights of the parent and his child which are inherent in the parent-child relationship, the rationale for determining that a child's best interest and welfare would be enhanced by permitting him to remain with adoptive parents must be substantial and not based on the advantages and opportunities offered by the competing parties but founded upon deeper and broader considerations, *In re N,* 96 N.J. Super. 415. With respect to this consideration it is contended that the welfare of the child in a custody contest between *natural parent and unrelated third parties* should never be defined in terms of material or cultural advantages as has been done in the case at bar, but upon those natural concerns which are embodied in the parent-child relationship itself, such as the ability to love, comfort, educate and inculcate the principles of acceptable conduct. To define the limits of

interpretation of the welfare of a child in any other terms would reduce the meaning of the parent-child relationship to a purely materialistic level, and could logically lead to permitting the State to shift "disadvantaged" children from their parents to "superior" families merely on the basis of personal-value judgments by unrelated parties and impersonal social and governmental agencies. To promote the viability of such a view of the parent-child relationship would be antagonistic to long established social and legal views, and to those basic human rights which are guaranteed by the Constitution.

## CONCLUSION

**For the reasons stated, the petitioner respectfully prays that the writ of certiorari be granted.**

Respectfully submitted,

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# APPENDIX A

## Constitution and Statutes.

Constitution of the United States

Amendment IX

"The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the People."

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New Jersey Adoption Act N.J.S.A. 9:3-17
Public Policy

This act shall be administered so as to give effect to the public policy of this State to provide for the welfare of children requiring placement for adoption and so as to promote policies and procedures which are socially necessary and desirable for the protection of such children, their natural parents and their adopting parents. To that end, it is necessary and desirable:

a) To protect the child from unnecessary separation from his natural parent; from adoption by persons unfit for such responsibility, and from interference by his natural parents after he has been established in an adoption home.

b) To protect the natural parents from hurried or abrupt decisions to give up the child; and

c) To protect the adopting parents from assuming responsibility for a child without sufficient knowledge of the child's heredity and capacity for physical and mental development, and, having accepted a child for adoption, from later disturbance of their relationship to the child by the natural parent.

*Constitution and Statutes.*

ABUSE, ABANDONMENT, CRUELTY AND NEGLECT OF CHILD; WHAT CONSTITUTES.

N.J.S.A. 9:6-1

Abandonment of a child shall consist in any of the following acts by anyone having the custody or control of the child:

a) wilful forsaking a child;

b) failing to care for and keep the control and custody of a child so that the child shall be exposed to physical or moral risk without proper or sufficient protection;

c) failing to care for and keep the control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public, or by child caring societies or private persons not legally chargeable with its or their care, custody and control.

# APPENDIX B

## Opinions and Orders Below.

### Opinion of the Middlesex County Court, Probate Division (not reported: rendered March 16, 1971)

CONFIDENTIAL

Middlesex County Court
New Brunswick, New Jersey

CHARLES M. MORRIS, Jr.
Judge

March 16, 1971

Harold J. Sklarew, Esq.
47 Paterson Street
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re: In the Matter of the Adoption of a Child by Peter A. Signorelli and Jo Ann Signorelli

Gentlemen:

This is a contested adoption. The taking of testimony was completed on February 26, 1971, at which time decision was reserved. Upon a further review of the evidence, the facts as they appear from that evidence, and in light of the applicable law, I have come to the conclusion that the adoption should be granted.

The adoptive child, Stephen, was born on June 22, 1968, in Brooklyn, N. Y. He has been in the custody and under the care of the plaintiffs continuously since February 18,

1969. At that time he was surrendered to the plaintiffs by his natural mother who contemporaneously executed an instrument wherein she consented to his adoption by plaintiffs. Although his natural mother certified and acknowledged that her action was wholly voluntary at that time and although she represented then that she would not at any future time assert any claim to the child, nevertheless in this proceeding she opposes the adoption and seeks to regain custody of her son.

There can be no doubt as to the qualifications of the plaintiffs as prospective adoptive parents. This has been thoroughly proved. When Stephen came under their care he was approximately eight months old. While generally normal, he was found to be somewhat pale and anemic. With proper medical care this condition has been overcome. From the testimony and the photographs in evidence it is obvious that he is thriving. He considers plaintiffs as his mother and father. While he is presently the only child he seems to be benefiting from the fact that he enjoys the relationship which he has with a number of "cousins."

In addition, the plaintiffs stack up well personally. Both are mature and responsible people. The adoptive father appears to have found his niche after some earlier indecisiveness. He is advancing with his present employer, earns a good wage, and is likely to continue to do even better in the future. He seems dedicated to his family. The adoptive mother has demonstrated with Stephen that she has what it takes to be a good mother. Both obviously have great love and affection for the child, fully as much as though he had been born of their union.

The natural mother concedes that the adoptive parents are well-qualified and have done an excellent job in caring for her son. However, in her changed circumstances she feels that she is now able to provide a proper home for him, complete with her husband, whom she feels will be-

come a father to the lad, and a little brother. Hence, she now desires to withdraw her consent to the adoption and to regain custody of her child.

There appears to be no precise standard or formula in the law for resolving a dispute of this kind. Generally speaking, a determination requires the court to evaluate all aspects of the situation and to decide what disposition is in the best interest of the child. The competing interests of a natural parent and adoptive parents are always quite evident, as is the heart-break on both sides, but such considerations are secondary. The welfare of the child is paramount and must be controlling. It is probably fair to say that over the years the natural mother has enjoyed something of an edge, all other things being fairly equal. However, each case must be decided on its own facts and necessitates the exercise of careful judicial discretion.

As has been noted, in this case the baby was placed directly with the plaintiffs by the natural mother and a written consent executed. Although the natural mother implies that it was not her truly voluntary act by reason of her circumstances, it is perfectly clear that no coercion or persuasion was exerted by or on behalf of these plaintiffs. When plaintiffs learned that the mother had a baby which she wished to place for adoption they simply presented themselves for her consideration and were accepted. The natural mother had the benefit of independent legal advice before, during and after the event. She also had the benefit of advice, albeit conflicting, from her own family and friends.

That the natural mother wanted to keep her baby in the beginning is very plain. That she was faced with enormous difficulties is also clear. To begin with the circumstances of conception were somewhat unusual. At the time she was an innocent girl, inclined toward obesity, and handicapped with two clubbed feet since birth. Until her involvement

with the putative father she never really had a boyfriend. She was employed as a secretary in her parish rectory which was situate quite close to her home. She met the father when she undertook to teach him English, he being a priest from Ecuador in this country to pursue advanced studies. Needless to say, the news of her pregnancy was greeted with shock and dismay in all quarters, not to mention disbelief.

It appears that the good Father's superiors were reluctant to believe that he was thus in violation of his vows but evidently chose to send him back to Ecuador. The natural mother was encouraged by her employers to plan to surrender the baby for adoption at birth. Her own mother initially encouraged her to seek an abortion. When this proved to be of no avail her mother also backed the adoption idea. The natural mother expressed her determination to keep the child. Her own mother informed her that she could not bring the baby home under any circumstances. The young lady continued to work in the rectory and to live at home right up until the time of the baby's birth. She expressed the view that no one suspected her condition because of her obesity.

The baby was first placed in the Guardian Angel Home when the mother was ready to leave the hospital because her mother would not let her bring him home. The natural mother was reluctant to leave home because she wished to resume her secretarial position with the church, and, being crippled, working at the church was very convenient for her. She was originally to be permitted to see the baby weekly but in a short time was told that she would be permitted to see him only monthly. It seems obvious that someone in a position of authority was trying to wean the baby away in the best interest of the child and also in the best interest of the unwed mother. However, the mother, encouraged by a girlfriend and aided by an at-

torney, regained physical custody of the child. Mother and child then lived with the girlfriend who cared for Stephen while the mother continued to work in the rectory. Stephen was three months old at this point.

The new arrangement was short-lived, lasting only six weeks. Evidently a provision of the friend's lease was violated by the presence of an excess number of persons. Arrangements were then made with another friend to care for Stephen while the mother returned to her home to live. This lasted for three or four weeks. Then the baby was cared for by still another friend who, in concert with her mother, kept him until he was placed with the plaintiffs. The natural mother continued to work at the rectory and to live at home with her own mother.

Although there is a dispute of fact as to certain events and attitudes during the period of December 1968, and February 1969, I find that there was a lessening of determination on the part of the natural mother to keep the baby. She became less attentive to his material needs. Her personal contacts became less frequent. It became necessary for the persons having his charge to call to remind her of her obligations. I find it very difficult to disassociate all of this from the fact that she had become acquainted with her present husband and was moving rapidly toward marriage with him. He, of course, knew nothing of Stephen and, in fact, learned nothing of him until the institution of these proceedings. By then he and the natural mother had been married for some time and were the parents of another son.

At any rate, shortly before the adoptive parents learned of Stephen the natural mother had acted to find an adoptive home for him. She had screened and rejected at least one other interested party. The plaintiffs learned of his prospective availability for adoption through the adoptive mother's sister, who in turn had learned from a neighbor whose husband had heard at work from a co-worker that

Stephen's mother was seeking a good home in which to place him for adoption. Contact was made, discussions took place, the parties met, and the plaintiffs acquired custody of Stephen.

The natural mother and her husband started to keep company a short time before Stephen was given to the plaintiffs. They met while he was stationed at the Brooklyn Navy Yard. Originally from the Philippines, he served as a mess boy for an admiral until shortly after his marriage on May 24, 1969. He now works as a draftsman and is attending school to enhance his qualifications. I was very favorably impressed with this young man. He has undoubtedly done much to stabilize his wife's life. I believe that he has the intelligence, ability, and will to succeed.

The natural mother and her husband became parents of a son on January 29, 1970. They have their own apartment which is described as being favorably located in relation to schools, medical services, shopping, transportation, etc. The natural mother has recently undergone what appears to have been a successful operation to correct her club feet. All in all she is not completely the same person who surrendered her son to the plaintiffs two years ago. Most of her problems appear to be nearing solution with the aid of her husband and the strength he provides.

Another disputed issue is the question of what effect, if any, a further uprooting would have on this youngster if I were to return him to his natural mother and her husband at this time. Dr. Sherwood, a pediatrician who has cared for Stephen since he has been with plaintiffs, expressed the view that if the child were placed in another home, even that of a loving natural mother, it would constitute an emotionally disruptive experience. While he would not go so far as to say a child of this age would not adapt, he indicated that the time it would take could not be predicted

nor could inner problems be assessed. Dr. Sherwood, in my view, tried to be completely candid in spite of the fact that he was called by the plaintiffs. He refrained from making dire predictions and offering extreme opinions. I found him to be a very credible witness.

Two other experts testified. The plaintiffs called Dr. Fink, a psychologist. The natural mother called Dr. Kayman, a psychiatrist. These gentlemen proved to be the advocates. Dr. Fink expressed the conviction that should the youngster be taken from the present home setting the consequences would most assuredly be deleterious, that the child would consider it as a rejection, and that in light of the deprivation which he experienced during the first eight months of his life to do so would be courting disaster. He said that it would probably cause an emotional regression in his opinion. He characterized such a move as "like playing with fire." He felt that the ill-effects would likely persist throughout Stephen's life.

Dr. Kayman, on the other hand, was the rosy optimist. He opined that there would be no lasting effects, that is, no emotional or personality disturbance, should the child be returned to the natural mother who is now able to respond to and fulfill his physical and emotional needs. Dr. Kayman pointed to the fact that Stephen has already demonstrated his emotional and psychological resilience since he is now doing so well in spite of the bouncing around of the first eight months of his life. He felt that the child is still young enough to adjust to such a move without long term effect, that he (the child) can see love and devotion not only in the present but also in the future, and that the child will accept that which the natural mother has to offer. He said that there is no clinical evidence that the child will be psychologically damaged or traumatized by a switch.

Both Dr. Fink and Dr. Kayman were difficult to shake on cross-examination. Both were reluctant to move from

their respective positions even in relation to varying hypotheses wherein the material facts were changed in several combinations. In short, neither witness forgot for a moment whose side he was supposed to be on. I do not intend to impugn the integrity of these men. I merely point out something which we are accustomed to seeing in court—which makes testimony from a Dr. Sherwood so refreshing.

In my judgment there is no answer to this question in terms of medical certainty, probably because situations of this kind are relatively rare and there exists no body of evidence upon which to base a reasoned opinion. I believe that Dr. Sherwood's testimony provides the most enlightened view of what the consequences would be should the child be returned to his mother, that is, it would be an emotionally disruptive experience and that the length and depth of the emotional consequences can not be predicted. Consequently, I conclude that this is one important reason why the child should remain in the present setting. In this fashion he can be completely shielded from any and all ill-effects which such a move might engender.

Another reason which I feel is significant to a degree is that on balance the plaintiffs have a slight edge. While I am favorably impressed with the husband of the natural mother and the progress which she had made in ordering her life, I am of the view that a future life with the plaintiffs holds out the greater assurance for the boy's future welfare. The plaintiffs are more mature. Their marriage has stood the test of greater time. Their economic situation is superior to that of the natural mother and her husband. Their family situation is also much stronger. By this I mean that Stephen will have more aunts and uncles close at hand who have already demonstrated that he is a fully accepted member of the family. On the other hand the relatives of the natural mother did not exactly come

through with flying colors in her hour of need. Unfortunately the family of the husband of the natural mother is not in this country to my knowledge. Who is there to step in? Should some untoward event occur in the future I feel that Stephen's welfare is in safer hands in the overall family setting in which he is presently situate.

An additional factor is one about which little has been said but it involves a fact of life. I am concerned that were I to return Stephen to his mother's old neighborhood, so to speak, what the gossips would and could do. I do not know for certain how many people in Brooklyn know about the circumstances of Stephen's conception or the identity or vocation of his father. However, from what I heard in the course of the testimony I would judge that more than a few people have some knowledge. I cannot help but wonder what the emotional consequences would be should it some day come to pass that some fresh-mouthed schoolmate were to taunt this youngster by throwing up to him the fact that his father was a priest. Again, it may never happen, but the chances of it happening in the present setting are virtually nil as compared with the chances of it happening in Brooklyn. This is one more reason why I feel the boy's future is in better hands if left where he is at present.

For these main reasons I find in favor of the plaintiffs. Plaintiffs' counsel may submit an appropriate order for judgment of adoption in keeping herewith. I suggest that it be consented to as to form by counsel for the natural mother if possible.

Very truly yours,

CHARLES M. MORRIS, JR.

CHARLES M. MORRIS, JR.

CMMJR/eh

## Order of Middlesex County Court, Probate Division (not reported: entered April 5, 1971).

ORDER UPON PRELIMINARY HEARING

This matter having come on for contested preliminary hearing with Ernest Gross, Gross, Weissberger & Linett, appearing for the Plaintiffs, and Harold J. Sklarew, Esq. appearing for the natural mother, and the Court after hearing the testimony and considering the evidence and the report of the State Board of Child Welfare of the State of New Jersey, having determined that the Plaintiffs have the potential fitness to adopt the said child and to provide a suitable home for the rearing of said child, and that the natural parents of said child should have no further right as to the custody of said child, it is thereupon on this 5th day of April, 1971,

ORDERED that the 23rd day of July, 1971, be fixed as the date for final hearing of this matter before this Court at the Middlesex County Court in New Brunswick, New Jersey, at 9:30 o'clock in the forenoon; and that the State Board of Child Welfare be appointed next friend of said child with the powers and duties provided in the Statute; and it is further

ORDERED that from the date of this Order,

(a) The rights, duties, privileges and relations theretofore existing between the child and the natural parents shall be in all respects at an end;

(b) That the said child sought to be adopted be and he shall hereby be known as Stephen Peter Signorelli, except that his birth records shall not be amended until final judgment is entered;

(c) The plaintiffs may act in their own name and provide for the health and education of the child;

(d) The plaintiffs shall not remove the said child so to be adopted from this State other than for vacations or temporary visits, except upon Order of this Court.

(e) The attorney for the Plaintiffs shall serve a copy of this Order upon the State Board of Child Welfare within ten days from the date hereof.

/s/ Charles M. Morris, Jr.
J.C.C.

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**Opinion and Judgment of the Superior Court, Appellate Division (not reported: Decided and entered April 11, 1972).**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1836-70

IN THE MATTER OF
ADOPTION OF CHILD
BY P.A.S., *et ux.*

Argued March 20, 1972—Decided Apr 11 '72.

Before Judges Conford, Matthews and Fritz.

On appeal from the Middlesex County Court, Probate Division.

Mr. Bernard T. Callan of the New York Bar, admitted *pro hac vice,* argued the cause for appellants (Mr. Robert C. Coyle, attorney).

Mr. Ernest Gross argued the cause for respondents (Messrs. Gross, Weissberger & Linett, attorneys).

PER CURIAM

The judgment of the Middlesex County Court is affirmed substantially for the reasons expressed in the letter opinion of Judge Morris, with the exception noted below. We agree that there is substantial credible evidence in the record to support Judge Morris' conclusion that the natural mother knowingly, willingly and freely surrendered the child for adoption by the adopting parents. We also find that the record amply supports his conclusion that it is in the best interest of this child that it be permitted to remain with its adopting family. *In re P, and wife,* 114 *N.J. Super.* 584 (App. Div. 1971).

We do not, however, agree with the judge's prognostication that the circumstances surrounding the child's parent would be the subject of gossips and perhaps affect the child's future if he returned it to the natural mother. We are satisfied, however, that the judge's observations with respect to this possibility were not necessary to support his ultimate conclusion.

Affirmed.

A TRUE COPY

MORTIMER G. NEWMARK
Clerk

**Order of the Supreme Court of New Jersey (60 New Jersey 514, June 8, 1972).**

SUPREME COURT OF NEW JERSEY

C-476 September Term 1971

On Petition for Certification

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In the Matter of the Adoption
of a child by P. A. S., et ux.

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To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the 8th day of June, 1972.

IRVING B. ZACHOUR
IRVING B. ZACHOUR
Acting
Clerk of the Supreme Court

Filed
Jun 8 1972

## APPENDIX C

### "Identity Development in Adopted Children" 47 *Pediatrics* 948 (1971).

AMERICAN ACADEMY OF PEDIATRICS

COMMITTEE ON ADOPTIONS

### IDENTITY DEVELOPMENT IN ADOPTED CHILDREN*

In our society, adoption has provided an effective procedure for making a place for children who for one reason or another are separated from their natural parents. As the numbers of adopted children increase, the psychological implications of this process have received increasing attention. Many pediatricians, psychiatrists, and social workers feel that, because of their adoptive status, some children may experience a degree of emotional stress that does not occur in children living with their natural parent or parents.

Certain differences influence the life of an adopted child; most important are those related to ego development and the establishment of a feeling of self-identity. The most helpful thing a human being can learn in life is to be conscious of himself as an individual, and to be aware of who and what he is. Determining identity is a difficult process for someone brought up by his natural parents; it is more complex for the individual whose ancestry is unknown to him. Awareness of this fact will permit the pediatrician to provide more realistic guidance and support for the adopted child and his parents.

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* This statement has been reviewed and approved by the Council on Child Health, American Academy of Pediatrics.

## *Identity Development in Adopted Children.*

### Influences in an Adoptive Family

In the natural family, the 9-month gestation period allows time for development of a basic matrix for impending parenthood. The anticipatory pleasure of both parents and the emotional support of the father contribute to this. In the adoptive family, the waiting period may be one of anxiety and uncertainty, in spite of the best efforts of agency personnel and others involved.

The insecurity of the period before adoption is finalized may inhibit emotional closeness of the adoptive parents to the child.

An unavoidable factor in adoption is the presence of multiple maternal figures. There are at least two, often more, depending on the length of time the child is in foster care.

Most adoptive parents are older than natural parents; for this reason, adoptive parents may have less flexibility and more anxiety in the daily care of their children than do natural parents.

The value of the adopted child may lead adoptive parents to overreact in their child-rearing activities. Such reaction may result in inconsistent patterns of care, especially in discipline and sexual matters.

If the adopted child remains an only child, which is often the case, he is subject to the same stresses that occur in a single-child home.

At some point, the child learns that he is adopted and begins to seek out the facts and their meaning. This search complicates the normal resolution of his relations with his parents.

Many adopted children become aware of the fact that they may have been born out of wedlock. Sensitive children frequently express strong feelings about their own status and the character of their natural parents.

*Identity Development in Adopted Children.*

In some homes the adopted child may become a symbol of infertility or lack of virility and create hidden hostility in one or both parents.

### Identity Needs of Individuals and Groups

The foregoing factors tend to influence the development of a strong, integrated, and independent ego which is indispensable for living and acting in our society in a successful manner. To state that a "feeling of self" is paramount in the development of a strong and functioning individual is not an exaggeration. The driving need for identity and independence is not only indigenous to the individual but it is also a dominant force in entire national and ethnic groups. Minorities within national states express these needs; examples of this are painfully evident in our country and in other parts of the world. Both individuals and groups within the general populace need a degree of ethnic and racial pride to build a solid feeling of worth.

### The Role of the Family Fantasy

Children commonly imagine that their natural parents are powerful and glamorous figures. This fantasy plays an important role in the identity development of many children.

The child who is living with his natural parents can ameliorate real or imagined disappointments with his parents by attributing noble qualities to the fantasy parents. Fantasizing aids the child in the difficult process of seeing himself as a unique person, different from his family.

On the other hand, fantasy holds a measure of reality for the adopted child because he realizes that he has nat-

ural parents that are unknown to him. Unless he is able to fuse the image of the "unknown" or "fantasied parents" with that of his adoptive parents, he may experience an inner conflict that will cause additional anxiety.

## The Quest for Knowledge Origins

There is ample evidence that the adopted child retains the need for seeking his ancestry for a long time. Adopted children frequently make a request to their parents or pediatrician for more information on their origin. When invited to the adoption agency for additional information, the individual may fail to go and may reveal his confusion and inconsistency by making the same request at a later date. What he is really seeking is to achieve a unity and persistence of personality in spite of the break in the continuity of his life. The struggle with this problem may reach its peak in adolescence and, in the extreme, result in running away in search of real parents.

The need for knowledge of ancestry may go unrecognized, or it may be suppressed by both the parents and the child. Parents should discuss with the child aspects of his background. An honest and straightforward exchange will do much to reduce the anxiety inherent in this area of identity formation, and such an exchange should be encouraged and assisted by the pediatrician.

## Conclusion

A recognition of the psychodynamics relating to the adopted child and his family will allow the pediatrician to prevent or modify destructive and harmful behavior. If adoptive families can be helped to understand the uniqueness of their relationship much anxiety and doubt can be minimized or avoided. Every opportunity must be used

to develop in the child a sense of worth, importance, and dignity—a true sense of identity. If the pediatrician is aware of this and develops knowledge and expertise in the adoption field, he can contribute significantly in improving the adoptive process.

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